

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER	<input type="checkbox"/>	DATE	<u>January 14, 2019</u>
MOTOR CARRIER MATTER	<input type="checkbox"/>	DOCKET NO.	<u>2017-207-E/2017-305-E</u>
UTILITIES MATTER	<input checked="" type="checkbox"/>	ORDER NO.	<u>2017-370-E</u>

SUBJECT:

[DOCKET NO. 2017-207-E](#) - Friends of the Earth and Sierra Club, Complainants/Petitioners v. South Carolina Electric & Gas Company, Defendant/Respondent;

[DOCKET NO. 2017-305-E](#) - Request of the Office of Regulatory Staff for Rate Relief to South Carolina Electric & Gas Company's Rates Pursuant to S.C. Code Ann. § 58-27-920;

-and-

[DOCKET NO. 2017-370-E](#) - Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans - Staff Presents for Commission Consideration the Petitions for Rehearing or Reconsideration of Order No. 2018-804, Filed on Behalf of the Office of Regulatory Staff, Friends of the Earth, Sierra Club, AARP South Carolina, Lynn S. Teague, Frank Knapp, Jr., Jerry Harvell, South Carolina Coastal Conservation League, and Southern Alliance for Clean Energy.

COMMISSION ACTION:

Mr. Chairman, when this Commission reached its decision in this case back in December, we set permanent rates that are comparable to – and slightly lower than – the significant rate reductions for SCE&G customers as called for by the General Assembly in its Act 258. Those rates are more than 15% below the established rates in place prior to abandonment.

In doing so, the issue of SCE&G's prudence in this project after March 12, 2015 became no longer legally relevant to our analysis, given the Company's agreement to not seek recovery of capital costs after that date. However, our ruling should not have been perceived as even an implicit finding of prudence on our part for capital costs incurred after March 12, 2015. Nothing could be further from the truth.

Several parties have petitioned this Commission to make a specific finding of imprudence as to costs incurred by SCE&G during the construction of the project. In order to address these concerns, and to emphasize the need for all regulated utilities to be transparent in their dealings with ORS and this Commission, I move we make a clear and unequivocal finding: the Company acted imprudently by not disclosing material, and even potentially decisive, information to ORS and the Commission. Due to the lack of transparency – the lack of forthrightness – with regard to reports and studies available to the Company, this Commission was effectively denied the opportunity to fully consider the prudence of continuing to expend resources on the project with all information available at the time. Under any definition of the term prudence, the Company was imprudent in its actions in this case with regard to costs incurred after March 12, 2015. We agree with ORS that it is essential to restore public trust for this Commission to acknowledge that the regulatory compact between the utility and the regulators was broken by SCE&G.

However, these actions were addressed by this Commission in our Order No. 2018-804. The Company agreed to significant concessions in response to its actions and offered Plan-B Levelized to accomplish this. The responsibility of the Company, created by nondisclosure, lack of transparency and forthrightness, has a price; that price is roughly \$3 billion and is to be returned to the ratepayers through the mechanisms in Plan-B Levelized as approved in our Order. We have ordered the Company to refund over a \$1 billion to ratepayers through lower rates going forward, and ordered the Company to provide approximately \$3 billion in benefits to ratepayers over time. The costs for SCE&G's actions are significant and have been accounted for by this Commission in our Order. We believe this result and finding emphasizes the need for all regulated utilities to be transparent in their dealings with ORS and this Commission.

This Commission has been charged with protecting customers of investor-owned electrical utilities from responsibility for imprudent financial obligations or cost. We have ordered the payment of resources from the Company – for the benefit of ratepayers – that maximizes relief within the limits of the authority of the Commission.

Maximizing customer benefits, Plan-B Levelized offered by Dominion reflects a careful balancing of accounting, tax, and credit considerations, among others. Under Plan-B Levelized, the proposed recovery of \$2.768 billion limits costs, and the associated prudence determination, to investments made by SCE&G on or before March 12, 2015. Importantly, though, the ORS does not contest the prudence of investments made before March 12, 2015, and our Order appropriately rejected arguments by other parties seeking an earlier date for cessation of recovery. By voluntarily limiting the NND rate base recovery to that date, the conduct of the Company discussed above is made no longer legally relevant to the analysis, since the Company has voluntarily removed its request for capital costs beyond that date. I find the 2006 South Carolina Supreme Court case *Sloan v. Friends of Hunley, Inc.*, instructive in this regard.

While several Petitioners have raised the specter of the utility somehow later pursuing recovery for capital costs incurred after March 12, 2015, this would not be possible under the law on abandonment. The current proceeding is the only proceeding in which recovery of costs in abandonment may be pursued. Joint Applicants are not seeking recovery of capital costs incurred after March 12, 2015, and are hereby expressly foreclosed from pursuing recovery of such costs in any future proceedings. No capital costs incurred after March 12, 2015, may be recovered as prudent. Indeed, at the conclusion of this case, the Legislature's Act 258 will abolish the BLRA, including the provision that allows any recovery in abandonment.

ORS, AARP, FOE/Sierra, and Mr. Knapp assert that it was error for the Commission not to require SCE&G to refund past revised rates collections. ORS seeks a return of revised rates collected after March 12, 2015, or associated with amounts of Project investment in excess of \$2.772 billion. Other Petitioners seek refunds going back further—in some cases, back to the beginning of the Project. As to those other Petitioners, I move that we find that their claims for an earlier date are not supported by substantial evidence in the hearing record. These parties never specified the amounts of such claimed refunds. They have also failed to make an adequate evidentiary showing or a legal justification to set aside legal precedent regarding the filed-rate doctrine and retroactive ratemaking for capital costs prior to March 12, 2015.

Regarding ORS' arguments, Order No. 2018-804 states that Plan-B Levelized provides for write offs, ratepayer refunds, and ratepayer restitution totaling approximately \$3 billion. Refunds are further addressed and included in the Commission's Order and the Tariff subsequently filed by SCE&G relating to the Capital Cost Rider. Under the Capital Cost Rider, regulatory liabilities will be established for refunds of the Toshiba Settlement as well as amounts previously collected under the BLRA in the amounts of \$1.032 billion and \$1.007 billion, respectively. The total amount of \$2.039 billion in refunds and restitution under the Plan-B Levelized is designed to compensate ratepayers for the time value of the delayed refund of the Toshiba Proceeds as well as provide refunds and restitution for any rate overpayments previously collected under the BLRA.

By requesting refunds of past revised rates collections, the Petitioners are asking, in effect, for SCE&G and Dominion Energy to add additional bill mitigation funds beyond what has already been approved in our Order. The combination of immediate write offs and long-term funding from Dominion Energy was sufficient to achieve bill levels comparable to those temporarily imposed by the General Assembly through Act 258, which has passed constitutional muster. The United States District Court held, in *South Carolina Electric & Gas Co. v. Randall*, that the rates imposed in Act 258 and Resolution 285 had not been shown to be confiscatory. As an intervenor in this case, Speaker of the House Jay Lucas has argued that setting the

rates significantly lower than the previously imposed temporary rates could create uncertainty for ratepayers due to constitutional challenges or bankruptcy concerns. Such uncertainty would be to the detriment of the rate-paying public. Further, the Commission was urged to adopt a rate within the constitutionally allowed 'zone of reasonableness' established by the experimental rate adopted in Act 258. We agree, and find that deviating from those rates, as advocated by the Petitioners seeking reconsideration, could raise constitutional difficulties, which could delay the implementation of the rate decreases approved in this case. As such, the rates approved by the Commission in Order No. 2018-804 represent a balancing of all interests in this case, recognizing the arguments on specific monetary issues, and the potential legal issues attached to those arguments. It further represents this Commission's effort to bring finality and stability for SCE&G's customers in this matter. Therefore, I move that we find this issue was appropriately addressed in our Order.

Next, several parties seek reconsideration regarding merger conditions to govern potential affiliate transactions that could occur between SCE&G and Dominion at some point in the future should the Atlantic Coast Pipeline extend into South Carolina. While I understand this concern, I believe this issue was appropriately addressed in our Order.

First, under Code Section 58-27-2090, this Commission already has broad oversight authority over all persons or corporations affiliated with a jurisdictional electrical utility. The burden of proof is on the utility to establish the reasonableness, fairness, and absence of injurious effect upon the public interest regarding fees or charges growing out of any transactions. Unless those standards are met, as determined by the commission, the fees and charges shall not be allowed by the commission for rate-making purposes.

Moreover, Order No. 92-931 places additional reporting requirements on SCE&G and SCANA's regulated affiliated companies regarding affiliate transactions, including the transfer of real property. Post-merger, these requirements apply to Dominion as well. The requirements in Order No. 2018-804 go even further. Some of those requirements memorialize the settlement agreement between Transcontinental Gas Pipeline Company, SCE&G, and Dominion Energy where those parties have voluntarily agreed to certain protections that will apply if SCE&G seeks to secure more than 100,000 dekatherms per day (dt/d) of additional natural gas transmission capacity from an interstate pipeline. In such cases, SCE&G will be required to issue a Request for Proposal (RFP). If SCE&G chooses to purchase capacity that is not the least-cost capacity offered, then SCE&G must request a public proceeding before the Commission to justify the purchase. Also, pages 100-101 of our Order set out significant and far-reaching merger conditions regarding affiliate transactions between Dominion and SCE&G. Therefore, I move that we find this issue was appropriately addressed in our Order. I would ask, however, that if Dominion chooses to file an application with FERC regarding the extension of the Atlantic Coast Pipeline into South Carolina, that it copy the ORS and the Commission with its federal filing.

Mr. Chairman, other than as I have set forth in this motion, I move that the Petitions for rehearing and reconsideration be denied. A full written order containing the Commission's findings will follow.

PRESIDING: Randall

SESSION: Regular

TIME: 11:00 a.m.

	MOTION	YES	NO	OTHER
ELAM	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
ERVIN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
RANDALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WHITFIELD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WILLIAMS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

RECORDED BY: J. Schmieding

(SEAL)

